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Adversely to Defendant by Verdict for Plaintiff.—All conflicts in the testimony are settled adversely to defendant by a verdict for plaintiff.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

2. Railroads (§ 350 (22)*)—Contributory Negligence of Driver of Horse and Buggy Held for Jury.—Evidence held not to show that a woman driving a horse hitched to a buggy struck by a train approaching without warning was contributorily negligent as a matter of law in approaching the crossing from which her view of the train, running at high speed, contrary to the ordinance, was obstructed until her horse was almost upon the track.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 142.]

3. Evidence (§ 383 (10)*)—Photographs Have No Greater Weight than the Testimony on Which Their Accuracy Depended.—Photographs of the scene of a railroad crossing accident, which were taken when there were no leaves on the trees, and no vegetation, as at the time of the accident, and which depended for their accuracy as to locations, distances, and other particulars upon human testimony, were not entitled to more weight than other evidence for the defendant in conflict with that relied upon by the plaintiff.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 142.]

Error to Hastings Court of Petersburg.

Action by Hattie E. Perkins against the Director General of Railroads. There was a judgment for defendant after verdict for plaintiff was set aside, and plaintiff brings error. Reversed, and final judgment entered for plaintiff for the damages fixed by the verdict.

R. H. Mann, of Petersburg, for plaintiff in error.

Mann & Townsend, of Petersburg, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* OLIVER.

June 15, 1922.

[112 S. E. 841.]

1. Trial (§ 139 (1)*)—Demurrer to Evidence Properly Overruled Where Evidence Will Support Finding Either Way.—Where the evidence in an action against a street car company for personal injuries to the driver of a wagon was such that a jury might properly have found either for or against the plaintiff on the issue of contributory negligence, defendant's demurrer to the evidence was properly overruled.

[Ed. Note.—For other cases, see 4 Va. W. Va. Enc. Dig. 536.]

2. Street Railroads (§ 99 (9)*)—Driver Can Assume Street Car Will Observe Speed Limits.—The driver of horse and wagon approach-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ing a street car track can assume that the street car will run at a lawful speed, and is not contributorily negligent for going upon the track after once looking, and seeing no car approaching too close to prevent his crossing the track in safety, if the car was not exceeding the speed limits.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 136.]

3. Street Railroads (§ 117 (29)*)—Contributory Negligence of Driver of Horse Held for Jury.—The driver of a horse and wagon held, under the evidence, not contributorily negligent as a matter of law in driving upon the track without looking a second time, as a result of which he was struck by a car running at excessive speed, and which gave no warning.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 140.]

4. Street Railroads (§ 117 (34)*)—Speed of Street Car as Proximate Cause of Collision Held for Jury.—In an action for injuries to driver of a horse and wagon struck by a street car, evidence held sufficient as against demurrer to show that the proximate cause of the injury was the excessive speed of the street car.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 142.]

Error to Hustings Court of Richmond.

Action by W. J. Oliver against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Affirmed.

E. R. Williams and *T. Justin Moore*, both of Richmond, for plaintiff in error.

L. O. Wendenburg and *T. Gray Haddon*, both of Richmond, for defendant in error.

VIRGINIA RY. & POWER CO. *v.* WELLONS.

June 15, 1922.

[112 S. E. 843-844.]

1. Street Railroads (§ 85 (4)*)—Vehicles Must Yield Right of Way to Street Car.—Where a street car had the right of way under a city ordinance, it is the duty of an automobile driver to yield if, when he started across the tracks, the relative position of the two vehicles was such that a reasonably prudent man would have foreseen that a collision was likely to occur unless one or the other stopped.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 136.]

2. Appeal and Error (§ 930 (1)*)—Testimony of Plaintiff's Witnesses Is Taken as True on Appeal from Verdict for Him.—Where there was conflict in the testimony as to the speed of the street car and the relative positions of the two vehicles, the facts as stated by

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.